KOH KOK ENG v. REGINA

[A. Cr. J. (Murray-Aynsley C.J.) November 18, 1954]

[Singapore — Magistrate's Appeal No. 165 of 1954]

Road Traffic Ordinance, 1941, s. 48(1) — Insurance — Certificate and policy differ — Policy prevails.

The appellant was the owner of a car in respect of which he held a Policy of Insurance. It appeared that one morning a Police patrol in Radio car saw the said car being driven by a female Chinese in an unsteady manner. The Police stopped it and the appellant was found seated beside the female driver who had no licence. He was *inter alia* charged under s. 48(1) of the Road Traffic Ordinance and the Magistrate found that there was sufficient evidence to show that the appellant did permit the female to drive the car while there was not in force in relation to the user of the car by the driver a policy of insurance in respect of 3rd party risks as complied with Part II of the Ordinance. Counsel for the appellant submitted that by the operation of an "exception clause" in the Policy of Insurance by the terms of which the owner was covered unless he knew that the driver was unlicensed the car in question would still be insured against 3rd party risks when driven by any driver who had the consent of the appellant. The Magistrate found that it was not proved that the appellant had given his general consent for the female to drive the car, and convicted the appellant.

On appeal it was argued inter alia: (1) that the appellant did not know that the person he permitted to drive his car did not have a licence; (2) that the person whom he permitted to drive the car told him that she had a provisional driving licence; (3) that the Magistrate erred in rejecting the submission of the operation of the "exception clause" on failure of proof that the appellant had given his general consent for her to drive. The terms of the policy differed from the certificate.

Held: (1) it was not proved that the appellant knew that the female driver was unlicensed; (2) where the certificate and the policy differ the latter prevails.

MAGISTRATE'S APPEAL.

N. A. Christopher for the appellant.

T. A. Mahony (Crown Counsel) for the respondent.

Murray-Aynsley C.J. : — In this case the terms of the policy differed from those of the certificate of insurance. By the terms of the policy the owner was covered unless he knew that the driver was unlicensed, which was not in the case here. Where the certificate and the policy differ the latter prevails. Hence I allowed the appeal.

Appeal allowed.

Solicitors for the appellant: *Christopher & Francis.*

KOH NGEE CHENG v. CHOP SIANG HUAT

[O. C. J. (Knight J.) November 29, 1954]

[Singapore — Suit No. 573 of 1954]

Landlord and tenant — Control of Rent Ordinance, 1953, s. 15(1)(k) — Demolition — "Necessary" and "essential" — Construction — Whether person holding under agreement for a lease is an owner — Estoppel.

The plaintiff in this case claimed possession of the ground and 1st floor of No. 16 Carpenter Street occupied by the defendants. The facts of the case were shortly as follows: In 1947 the Commissioner of Lands agreed to grant a 99 years' lease from 1st May 1941 to a Madam Sim Gek Keow in respect of the premises. In 1949 Madam Sim assigned all her interest under the lease with the consent of the Commissioner of Lands to the plaintiff for a consideration of $22,000. One of the terms of the agreement for a lease from the Crown was that the existing building should be demolished and a new building constructed on the land. The building was old and in a shocking state. Notice to quit was served on the tenants but they disregarded it and remained in occupation.

Held: (1) the facts showed that what was required by common sense was that the building should be demolished and therefore this was a proper case for getting possession under s. 15(1)(k) of the Control of Rent Ordinance; (2) the plaintiff was not on the facts of this case the owner of the premises but the defendants were estopped from denying that the plaintiff was their landlord.

[Editorial Note: Control of Rent Ordinance, 1953, s. 15(1)(k) reads: "where the landlord of any premises intends to demolish the premises or any part thereof for the purpose of rebuilding on the site or part thereof and the Court is satisfied that such demolition is necessary in the interests of public health or town improvement either by reason of the condition of the building or otherwise."]

Case referred to:—

(1) *Yap Chin Min v. Loh Ah Peng* (1953) M.L.J. 65.

ACTION for possession.

John Laycock for the plaintiff.

Kenneth Gould for the defendants.

Cur. Adv. Vult.

Knight J. : — In this action the plaintiff claims possession of the ground and first floors of No. 16 Carpenter Street, Singapore, which premises are being occupied by the defendants. Notice to quit was served on the defendants on 29th March 1949 but after the expiry of the notice they remained in occupation as statutory tenants and subsequently, on 31st August 1953, a further notice to quit was served upon them; this also they disregarded and they are still in occupation and possession of the premises.

Neither the facts nor the law, in this case, are simple and as I am informed that this is the first of what may well be a series of similar cases, I propose to deal with the history of the matter in some detail.

On 17th September 1947 (the earlier transactions not being relevant) the Commissioner of Lands agreed to grant a 99 years lease (running from 1st May 1941) to a Madam Sim Gek Keow in respect of No. 16 and part of No. 15 Carpenter Street. Amongst other terms the ground rent was fixed at $597 per annum;

the existing building was to be demolished and a new building was to be constructed within 2 years from 1st September 1947. On 24th March 1949 Madam Sim assigned to the plaintiff all her interest under the lease (with the consent of the Commissioner of Lands) for a consideration of $22,000 and on 29th March 1949, the plaintiff gave notice to the defendants to quit the premises as he, of course, was bound by the same conditions as to demolition and rebuilding as Madam Sim had been. As noted above the defendants ignored this notice and on 27th May 1949 the plaintiff's solicitors wrote to the Commissioner of Lands explaining his inability to comply with the terms of the lease and asking for an extension of time within which to do so. This, somewhat grudgingly, was afforded by the Commissioner of Lands but in answer to yet a further application for an extension, he wrote on 21st February 1951, that he was prepared to recommend to Government that the plaintiff be granted a new lease of 99 years from the 1st January 1951 on similar demolition and rebuilding conditions but that ground rent should be increased to $1,839 per annum. No reason was given for this substantial increase in ground rent and the decision appears to have been a most arbitrary one; the plaintiff, however, had no alternative but to accept and on 3rd April 1951 entered into an agreement with the Government in which the terms and conditions of the lease were embodied (page 20 Exhibit AB). Thereafter ground rent at the new enhanced rate was duly paid, but owing to the provision of the Control of Rent Ordinance, 1947, no steps could be taken to evict the defendants who have regularly paid, or offered, rent and a hopeless stalemate ensued leaving the plaintiff with no alternative but periodically to apply for an extension of time, which, to date, has always been granted to him.

It will thus be seen that through circumstances which were entirely beyond his control the unfortunate plaintiff, having paid a large sum of money for Madam Sim's interest in this property, is quite unable to reap any benefit from it — save his rent — and is faced on the one hand with the steady deterioration of the building and on the other, with the constant threat from the Commissioner of Lands that no further time would be granted within which to demolish and rebuild. He has the further difficulty to face — namely that if the Commissioner of Lands should refuse an application for an extension of time, he will lose all rights under his agreement and, of course, the sum of $22,000 which he has paid to Madam Sim.

No doubt to meet this and other unsatisfactory situations, the new Control of Rent Ordinance 1953 was passed into law and this action has been brought under Section 15(1)(k) — the plaintiff now claiming possession on the grounds that he intends to demolish the building and that such demolition is "necessary in the interests of public health or town improvement."

In support of this contention the plaintiff called several witnesses and produced six photographs which show the condition of the premises to be undoubtedly bad. Certain of the ceilings are sagging; the staircase appears to be rotten; there is little light and ventilation and one witness of considerable experience says that parts of the building are positively dangerous. For the defendants it is maintained that the building is admittedly old (it is thought to have been erected more than 50 years ago), that nevertheless it is perfectly habitable; that it is not generally in a dangerous state and that in any event its condition is no worse than hundreds of other buildings in Singapore.

Now there can be no doubt that all the merits of the case lie with the plaintiff. The building is obviously in a shocking state and it would be quite impracticable to repair it adequately. The fact that there may be many other buildings in a similar condition is irrelevant and I am thus strongly inclined to assist the plaintiff in obtaining possession thereby not only extricating him from a seemingly hopeless situation, but also making some, albeit a small, contribution to town improvement.

For the defendants, however, it is argued that the wording of Section 15(1)(k) of the Ordinance must be construed strictly and that the word "necessary" means "essential". How, maintain the defendants, can it be said that it is "essential" either in the interests of public health or town improvement that this building should be demolished? Several large families have been living in it with good health for many years and town improvement cannot reasonably be contemplated when all the neighbouring buildings are in no better condition. There is some substance in this argument it is true; but the word "necessary" has many shades of meaning and in its every day use surely it simply means something which is required. The word "essential" goes further than this and had the Legislature intended that the Court must be satisfied that the demolition of a building was "essential" in the interests of public health or town improvement, how very easy it would have been to say so. What is required, in the circumstances of this case, permits of no doubt. The building is old and rotten; ventilation and light are hopelessly inadequate and in my opinion everything points to the fact that what is really required by common sense is that it should be demolished. In my opinion, therefore, this is a proper case for granting possession under sub-section 15(1)(k).

There is, however, another defence to the plaintiff's claim — namely that he has no title to the property and thus cannot claim possession. It is not disputed that he has an agreement under which he may ultimately acquire a lease and thus he may have an equitable title to the property — but in the present situation, it is argued, he can no more call for a lease than can the defendants; that he is thus no more than a licensee himself (though possibly with an equitable interest) and the defendants in turn are no more than his licensees. It follows, therefore, that the relationship of landlord and tenant does not exist between them; the notice to quit is bad and the plaintiff is not a "landlord" in terms of the Control of Rent Ordinance.

I must confess that this matter has given me much trouble. The authorities quoted are very old and, as was thus to be expected, not fully in point. The conclusion, however, which I have reached is that without involving the doctrine of estoppel (if it applies) it cannot possibly be said that the plaintiff is a landlord in terms of this Ordinance. In my opinion Mr. Gould's point is a good one. In *Yap Chin Min v. Loh Ah Peng*[1] the appellant had an agreement for a lease for five years with an option for a further five years. He was held, however, not to be an "owner" in terms of the previous Control of Rent Ordinance; and the fact that in the new Ordinance the word "landlord" is substituted for "owner" and the plaintiff here may have the possibility of acquiring a longer lease than did the plaintiff in that case, can in no way alter the position. The learned Chief Justice in *Yap's*[1] case admits of the possibility that a person with a lease of say 99 years might be regarded as an "owner" — but that of course, does not arise here since the plaintiff has no lease at all, but merely an agreement for one.

It remains for consideration whether the defendants are estopped from denying that the plaintiff is their landlord. Now in the first place there can be no doubt that throughout the whole history of this affair they knew only too well of his position *viz-a-viz* the Government and at all times the plaintiff has been entitled to rent which, indeed, was increased by the Rent Board following a hearing at which the defendants are said not even to have attended and certainly never suggested that they were not the plaintiff's tenants. No question arises of misrepresentation or fraud and the defendants have made no attempt to explain why over the many years which have passed they have regularly paid rent to the plaintiff which of itself, is *prima facie* evidence of the relation of landlord and tenant between them. In my opinion they must be estopped from denying this relationship and in this respect also, the defendant's case must fail.

There will thus be judgment for the plaintiff in terms of the Statement of Claim with costs.

Claim allowed.

Solicitors: *Laycock & Ong; Rodyk & Davidson.*

Re ONG TIANG SOON DECD.; TAN SWEE NEO & ANOR. v. ONG YAN HO NEO & ANOR.

[O. C. J. (Murray-Aynsley C.J.) July 27, 1954]

[Singapore — Originating Summons No. 46 of 1954]

Will — Construction — Vesting — Direction to pay at the end of a certain period — Gift of interest in the meantime.

In this case the testator gave the residue of his property to trustees for conversion and subject thereto to pay the balance of the income, after paying outgoings and certain temporary annuities, for a period of 21 years to three sons named in the will and after the period of 21 years to hold on trust for the same three children both as to capital and income. One of the sons died testate not leaving issue before the expiry of the period of 21 years. The question for determination was whether the interest of the son was vested.

Held: the interest of the son was vested and on his death passed to his personal representatives.

Cases referred to:—

(1) *Batsford v. Kebbell* (1797), 3 Ves. Jun. 363; 6 R.R. 15; 30 E.R. 1055.

(2) *In re Lodwig* (1916) 2 Ch. 26.

ORIGINATING SUMMONS.

R. S. Boswell for the plaintiff.

J. W. Cashin for the defendants.

A. J Braga for a beneficiary.

Cur. Adv. Vult.

Murray-Aynsley C.J.: — This Summons concerns a usual type of Chinese will. The testator gave the residue to trustees for conversion and subject thereto to pay the balance of income, after paying outgoings and certain temporary annuities, for a period of 21 years to three sons named in the will and after the period of 21 years to hold on trust for the same three sons both as to capital and income. There is a proviso dealing with the interest of any son who should die leaving issue before the period of 21 years. This has not happened. One of the sons died testate not leaving issue. The question is whether the interest of that son was vested. If the matter were free from authority one would be inclined to think that there could only be an object in postponing enjoyment (where there is no question of a minority) for a period in gross if the shares do not vest in the meantime. If